

| आयकर अपीलिय अधिकरण न्यायपीठ, गुवाहाटी।
IN THE INCOME TAX APPELLATE TRIBUNAL
"GUWAHATI" BENCH, GUWAHATI
BEFORE SHRI RAJPAL YADAV, HON'BLE VICE PRESIDENT
&
DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER

I.T.A. No. 193/GTY/2018
Assessment Year: 2014-15

Fortright Consultants Private Limited T-1, 3 rd Floor Shivam Apartment House No. 99, A.K. Azad Road Rehabari Guwahati -781008 [PAN : AACCF2203K]	Vs	Income Tax Officer, Ward-2(1) Guwahati
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अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
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Assessee by :	None
Revenue by :	Shri N.T. Sherpa, JCIT

सुनवाई की तारीख/Date of Hearing : 20/12/2022
घोषणा की तारीख /Date of Pronouncement: 20/02/2023

आदेश/ORDER

PER DR. MANISH BORAD, ACCOUNTANT MEMBER :

The present appeal is directed at the instance of the assessee against the order of the learned Commissioner of Income Tax (Appeals) - Guwahati-1, Guwahati, (hereinafter the "ld. CIT(A)") dt. 31/03/2018, passed u/s 250 of the Income Tax Act, 1961 ("the Act"), for Assessment Year 2014-15.

2. The assessee has raised the following grounds of appeal:-

"1. That the impugned order dated 31/03/2018 passed by the learned Commissioner of Income Tax (Appeals), Guwahati-1, Guwahati is without jurisdiction, illegal, invalid and bad-in-law being passed in the contraventions of the Principles of Natural Justice without allowing proper opportunity of being heard.

2. That the findings and observations of the learned Commissioner of Income Tax (Appeals), Guwahati-1, Guwahati made in his order dated 31/03/2018 are all perverse and contrary to the facts and laws of the case.

3. That the learned Commissioner of Income Tax (Appeals), Guwahati-1, Guwahati erred in confirming the addition of Rs.9,49,00,000, being the outstanding balance of creditors, made by the Assessing Officer as unexplained cash credit under section 68 of the Income Tax Act, 1961 (the Act) on irrelevant considerations, arbitrary grounds, on mere surmises, suspicions, conjectures and in disregard of the Principles of Natural Justice.

4. That the learned Commissioner of Income Tax (Appeals), Guwahati-1, Guwahati misdirected himself in law by enhancing the assessed income of the Assessee Company by the sum of Rs.3,86,50,000 by treating the share application money received by the Assessee Company as unexplained cash credit under section 68 of the Act.

5. That the learned Commissioner of Income Tax (Appeals), Guwahati-1, Guwahati erred in not allowing reasonable opportunity of showing cause as contemplated under section 251(2) of the Act before exercising his power to enhance the assessed income of the Assessee Company by the sum of Rs.3,86,50,000.

6. That the learned Commissioner of Income Tax (Appeals), Guwahati-1, Guwahati erred in making addition of the share application money of Rs.3,86,50,000 in disregard of the binding judgments of Hon'ble Apex Court, Hon'ble Jurisdictional High Court and the Hon'ble Jurisdictional ITAT which directly lays down ratio on the merits of the addition of share capital under section 68 of the Income Tax Act, 1961.

7. That the learned Commissioner of Income Tax (Appeals), Guwahati-1, Guwahati had misdirected himself in law in making addition of the sum of Rs.9,49,00,000 and Rs.3,86,50,000 as unexplained cash credit under section 68 of the Act in complete disregard of the binding judgment of the Hon'ble Jurisdictional Calcutta High Court rendered in the case of CIT vs. Dataware Private Limited [ITAT No. 263 of 2011 and G.A. No. 2856 of 2011].

8. That the learned Commissioner of Income Tax (Appeals), Guwahati-1, Guwahati had misdirected himself in law in referring to and relying on the untested statement given by one Shri Manish Maheshwari, who has no connection and/or relation with the Assessee Company, in order to draw adverse inference in the instant case.

9. That the impugned order passed by learned Commissioner of Income Tax is against law and facts of the case."

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3. None appeared on behalf of the assessee. Under these circumstances, we dispose off this miscellaneous application *ex-parte* on merits *qua* the assessee after hearing the Id. Departmental Representative.

4. Brief facts of the case are that the assessee is a Private Limited Company engaged in consultancy business. Income of Rs.1806/- declared in the return filed for Assessment Year 2014-15 on 28/09/2014. Case selected for scrutiny through CASS followed by service of notice u/s 143(2) & 142(1) of the Act. The Id. AO completed the assessment proceedings for making an addition of unexplained cash credit of Rs.9,49,00,000/-. The said credit was not through banking channel but it was against the purchase of equity shares from creditors on credit basis and against such equity shares purchased by it, had made investment in other equity shares. The Id. AO was not satisfied with the explanation given for the said credit of Rs.9.49 Crores and made the addition. Thereafter, the assessee approached the Id. First Appellate Authority but no compliance was made. The Id. CIT(A), so far as the additions u/s 68 of the Act at Rs.9.49 Crores was concerned, confirmed the said addition and further enhanced the income of the assessee by making addition for unexplained share capital of Rs.3,86,50,000/-.

5. Aggrieved, the assessee is in appeal before this Tribunal.

6. The Id. D/R supported the order of both the lower authorities.

7. We have heard the Id. D/R perused the record placed before us. We find that the Id. CIT(A) has confirmed the addition u/s 68 of the Act of unexplained credit towards purchases at Rs.9.49 Crores, as the assessee failed to discharge its onus to proof to explain the credit of the creditor, namely, Ecstatic Traders Pvt. Ltd.. Thus, the addition stands confirmed by the Id. CIT(A) and during the course of first appellate proceedings before

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the Id. CIT(A), income of the assessee was further enhance for not explaining the share capital and premium issued during the year amounting to Rs.3,86,50,000/-. Though the assessee has not appeared before us on the date of hearing before us, however, perusal of the ground shows that one of the grievance of the assessee is contravention of principles of natural justice and not allowing proper opportunity of being heard and also for not issuing the showcause notice/ and also not providing ample opportunity of showing cause to the assessee as contemplated u/s 251(2) of the Act and this grievance has been raised through Ground Nos. 1,2 & 5. We are conscious of the fact that for the purpose of adjudication of the issues raised before us, complete facts of the case needs to be addressed and both the sides should be given fair opportunity. Since the impugned order before us is that of the Id. CIT(A) and the same is *ex-parte* since the assessee did not appear on the given date of hearing even though sufficient opportunity was provided still taking a lenient view and in the interest of justice, we deem it fit and proper to restore the issue raised on merits to the Id. CIT(A), for fresh adjudication. The assessee is directed to place all these documents before the Id. CIT and not to take any adjournment unless required for reasonable cause and explain the facts of the case and the source of cash deposit to the satisfaction of Id. CIT(A) who shall provide the assessee a reasonable opportunity of being heard.

8. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the Court on 20th February, 2023 at Guwahati.

Sd/-

(RAJPAL YADAV)
VICE-PRESIDENT

Sd/-

(DR. MANISH BORAD)
ACCOUNTANT MEMBER

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आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि ,आयकर अपीलीय अधिकरण, गुवाहाटी /DR,ITAT, Guwahati,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Guwahati